



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 07.11.2023***

Pronounced on: 22.12.2023

+ CRL.A. 839/2023

MANISH @ GANJA

..... Appellant

Through: Mr. Kanhaiya Singhal, Mr. Prasanna,
Mr. Ajay Kumar, Mr. Ujwal Ghai and
Mr. Teeksh Singhal, Advocates

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Pradeep Gahalot, APP for State
with Insp. Shiv Prakash, PS Patel
Nagar

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE SHALINDER KAUR**

JUDGMENT

SHALINDER KAUR, J

1. The present appeal has been preferred under Section 374(2) read with Section 383 of Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment dated 28.02.2023 and order on sentence dated 18.05.2023 passed by learned Additional Sessions Judges, Delhi in S.C. No.28297/2016 for the offence punishable under Sections 302/34 Indian Penal Code (hereinafter referred to as 'IPC') whereby the appellant
CRL.A. 839/2023



was sentenced to undergo rigorous imprisonment for life with fine of Rs.20,000/- for the offence punishable under Section 302/34 IPC and in default of payment of fine, he was directed to undergo simple imprisonment for six months.

2. To appreciate the contentions of the appellant herein, accusations which led to the trial of the accused / appellant are essentially as under:

- I. On 28.11.2010 at about 5:15 pm, a call regarding quarrel in front of H.No.2103 near Nagar Nigam School, Prem Nagar, Delhi was received at Police Station Patel Nagar and it was reduced in writing vide DD No.21-A. The said DD was handed over to SI Ganesh Yadav for necessary action. He along with Constable Devraj and Constable Homenidhi reached at the spot and from there, he gave intimation on telephone to the Investigating Officer (hereinafter referred as 'I.O.')
- Inspector Pawan Singh Rana that a person namely Kadedin Singh has been stabbed and he was being taken to the hospital. On receipt of the said information, Inspector Pawan Singh Rana along with his staff reached the spot and found that the injured was being taken by some persons to the hospital in a private car. He



instructed Constable Homenidhi to accompany the injured to the hospital. Thereafter, he inspected the spot and found blood stains at different places. The IO could not find any eye-witness at the spot. He came to know that Manish @ Ganja and JCL 'B' ran away from the spot after inflicting injuries with a knife to the injured Karedin. IO collected the blood samples and other exhibits from the spot. In the meantime, SI Ganesh Yadav telephonically informed the IO about the death of injured at RML Hospital. The said information was also received by the IO from duty officer, police station Patel Nagar who had recorded DD No.22A in this regard. IO instructed SI Ganesh Yadav to complete all the formalities in hospital and enquired from him in case any eye witness was present with the deceased then he should inform him as he was not able to find any eye witness at the spot.

- II. Subsequently, SI Ganesh Yadav informed the IO that all the formalities were complete and the eye-witness of the incident namely Akash, son of the deceased with other known person was with him at the hospital and they were going to the police



station. On receipt of the said information, IO left constable Devraj at the spot for its preservation and he himself went to the police station.

- III. At about 9:30 pm, SI Ganesh Yadav produced Akash before the IO at the police station and he also handed over to the IO, two sealed parcels containing two brown colour sweaters, one steel grey colour shirt and one cream colour vest of the deceased along with sample seal which were given to him by the concerned doctor at the RML hospital. Thereafter, IO recorded statement of Akash aged 14 years, in the presence of Raju Yadav and Darshan Singh. In his statement, Akash has stated that he was residing with his family consisting of his deceased father, mother, younger sister and three younger brothers. Regarding the occurrence, he informed the IO that he was working as a waiter and the said job was got secured through his neighbour Ravi and on that day, at about 5 pm, he was standing outside his house while interacting with Ravi in connection with some of his dues/salary. He further stated that at that time accused/ appellant Manish @ Ganja, whom he



knew well as he was in habit of quarrelling with people, came from behind and kicked on his back without any reason. On this, he got scared and starting walking away from there. In the meanwhile, his father met him and he narrated the said incident to his father. Thereupon, his father inquired from Manish @ Ganja about the reason for having kicked Akash. On this, Manish @ Ganja asked from father of Akash, his relationship with Akash to which his father responded that Akash is his son and a scuffle took place between his father and the accused/appellant, however, subsequently, his father apologized and started to proceed for his work. In the meanwhile, accused/appellant went to the opposite street and stood there. After sometime, his father returned thinking that accused/appellant may not quarrel with his children and he made a call on 100 number regarding the quarrel. In the meantime, accused/appellant came there and threatened his father that his call at 100 number won't harm him. This caused another scuffle between the two and Akash tried to intervene. In the meanwhile, JCL 'B', a close friend of Manish @ Ganja came



there, Manish @ Ganja urged to JCL 'B' to bring a knife. Upon getting the knife, JCL 'B' started clouting his father with the knife from behind. Due to the intervention of Akash as he was trying to stop JCL 'B', the said knife fell on the road. Thereupon, Manish @ Ganja lifted the knife and stabbed it thrice in the stomach of his father due to which his father got seriously injured and fell unconscious. In the meanwhile, his mother arrived at the scene and Akash made a call to the police from a local telephone booth and informed them about the incident.

IV. Both Manish @ Ganja and JCL 'B' fled away from the spot. In the meanwhile, his father's acquaintances Sh.Raju Yadav and Sh.Darshan Singh and other public persons came at the spot. His mother got his father admitted in the RML hospital with the help of police where he was declared dead. Akash's statement recorded by the IO in question-answer form was counter signed by Darshan Singh and Raju Yadav.

3. On the basis of the said statement, present FIR No.267/2010 was registered under Sections 302/34 IPC.



4. During investigation, IO collected the blood samples and earth control, prepared five separate samples and sealed them with the seal of PSR. On 02.12.2010, post-mortem of the deceased was got conducted at Deen Dayal Upadhyay hospital. The autopsy surgeon handed over the duly sealed parcels/ exhibits taken from the dead body of the deceased to the IO who seized it.

5. On 08.12.2010 at about 5:45 pm, on receipt of secret information about JCL 'B', police apprehended and arrested him, his disclosure statement was recorded. He led the IO to his house i.e. House No.2101/B, Sitaram Ka Makan, Gali no.13 near MCD Primary School, Prem Nagar, Patel Nagar, Delhi from where a button actuated black colour leather cover of knife was got recovered from under his mattress. JCL 'B' disclosed that it was the cover of the same knife that was used by him and the Manish @ Ganja, in commission of the offence with which the Manish @ Ganja had escaped after the incident and gave the cover to him, for keeping it in safe custody. Thereafter IO prepared the sketch of the said cover and kept it in a white cloth and its parcel was prepared and sealed with the seal of the PSR and was seized.

6. While Manish @ Ganja kept evading his arrest and after adopting due



process of law, he was declared proclaimed offender on 03.02.2011. After completion of investigation with respect to JCL 'B', chargesheet under Sections 302/34 IPC was filed before the concerned learned Metropolitan Magistrate. After compliance of provision of Section 207 Cr.P.C, the case was committed by the learned Metropolitan Magistrate to the Sessions Court. In the meanwhile, Manish @ Ganja was arrested on 20.09.2011 and supplementary chargesheet was filed under Sections 302/34/174A IPC against him. Vide order dated 13.01.2012, JCL 'B' was declared juvenile and proceedings with respect to him were transferred to Juvenile Justice Board.

7. The accused-appellant Manish was charged for the offence punishable under Sections 302/34 IPC on 30.05.2011 whereby he pleaded not guilty and claimed trial.

8. For establishing its case, the prosecution has examined 24 witnesses in the present case. Statement of the appellant under Section 313 Cr.P.C. was recorded on 27.11.2021 wherein he denied all the incriminating evidences put to him and pleaded his innocence. He stated that on the day of the incidence at about 3:45/4:15 PM, he went to the spot for taking some eatables from the stall and prior to the incident, he had gone to the house of



his relatives at Nehru Nagar. He was not involved in the incident and has been falsely implicated because of his friendship with JCL‘B’. He also submitted that he did not know the deceased and his family members prior to the incident. He used to sell illicit liquor but never gave money to the police officials, that is why he has been falsely implicated in the present case by the police. The accused-appellant did not produce any evidence in defence. Subsequent thereto, learned trial court heard the arguments and delivered the judgment wherein the accused-appellant was convicted under Sections 302/34 IPC on 28.02.2023 and sentenced on 18.05.2023.

9. Learned counsel for the appellant assails the impugned judgment on the ground that in the entire roster of witnesses prepared by the prosecution, not even a single witness from the public was present at the spot including public witness Ravi was cited by the I.O. The learned trial court failed to take into notice that the other two eye-witnesses of the alleged occurrence, PW-18 Bishamber and PW-23 Jasbir Singh have not supported the prosecution which seriously crumpled the prosecution case. It was submitted that the weapon of offence i.e. the knife used to commit the said murder was never recovered. The learned trial court thus failed to consider the material available on record in its true sense and passed the impugned judgment in a



mechanical and hurried manner.

10. Further the prosecution also failed to prove that the appellant premeditated to eliminate the deceased and in the absence of any motive, the learned trial court has wrongly convicted the appellant in the present case. It was also submitted that even if the accusation against the appellant are accepted in toto, still a case under Section 302 IPC is not made out as appellant was deprived of the power of self control by grave and sudden provocation, caused to him by the deceased resulting in his death and there was no malice on the part of the appellant to inflict bodily harm to deceased.

11. Learned counsel lastly submitted that the prosecution witnesses suffer from contradictions and have put forth improbable version which cannot be made the basis of conviction of the appellant. Moreover, the truthfulness of eye-witnesses i.e. PW-5 Akash Singh and PW-14 Neetu is doubtful being not independent or impartial and creates a serious doubt on the prosecution story, which shows that the prosecution failed to prove its case beyond reasonable doubt and the conviction is based on conjectures ignoring significant inconsistencies.

12. To strengthen his arguments, learned counsel has placed reliance to the judgment in case of *State vs. Rahul: 2011 (2) JCC 701* and *Sunil*



Kumar vs. State: 181 (2011) DLT 528 and submitted that the learned trial court failed to notice the basic rule with respect to the administration of justice in criminal cases which has led to miscarriage of justice due to which the appellant deserves acquittal. Therefore, in the wake of weak and inconsistent evidence produced by the prosecution, benefit of doubt goes in favour of the appellant. Resultantly, he be acquitted of the charges framed against him.

13. In reply, learned Additional Public Prosecutor for the State submitted that the learned trial court after careful appraisal of evidence, had rightly held the appellant guilty vide the impugned judgment and same be upheld, dismissing the present appeal. It was submitted that looking at the factual background as projected by PW-5 Akash and PW-14 Smt.Neetu who are eye-witnesses and the nature of injuries inflicted, the learned trial court was justified in recording conviction under Section 302 IPC. Both the witnesses have consistently testified that during the quarrel between the deceased and the appellant, he directed the JCL 'B' to bring a knife which was produced by JCL 'B' and appellant picked up the knife from the ground, which had fallen from the hand of the JCL 'B' and inflicted three injuries on the chest and abdomen of the deceased, resulting in the death of the deceased. The



learned APP submits that even the testimony of other two eye-witnesses PW-13 Jasbir and PW-18 Bishambar cannot be totally discarded, they may not have supported the prosecution with respect to the identity of the appellant but have stated that the deceased was murdered by two boys with a knife which is a relevant incriminating fact. Moreover, PW-3 Raju and PW-15 Darshan had immediately reached at the spot of the incident after the fatal assault had happened and have consistently testified above it. The version of the prosecution witnesses is further strengthened by the post mortem report of the deceased, therefore, the prosecution case cannot be doubted.

14. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for State at length and have also perused the material available on record.

15. The following material evidences emerge; PW-5 Akash and PW-14 Smt. Neetu are the lead eye witnesses, PW-3 Raju and PW-13 Darshan Singh are the other witnesses who were available at the scene of the crime at different times, therefore, their evidence is relevant. Needless to say, the other eye witnesses, PW-18 Bishambar and PW-23 Jasbir Singh have not supported the case of the prosecution. They turned hostile not only with



respect to the identity of the appellant but also did not dispose anything about the incident as witnessed by them. Nevertheless, we do not find force in the submission made by the learned counsel for the appellant as two independent eye witnesses were declared hostile and other public witnesses from the spot of incident, specifically Ravi were not introduced as prosecution witnesses by the IO, it generates a doubt on the prosecution's case and makes it unbelievable.

16. It is to be noted that the law is settled that in the matter of appreciation of evidence of witnesses, the golden rule is “evidences to be weighed and not counted”. In the case of ***R. Shaji vs. State of Kerala*** : (2013) 14 Supreme Court Cases 266, the Hon'ble Supreme Court observed as under:

“39. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted.....”

17. Therefore, we are of the considered opinion that if the testimony of eye witnesses PW-5 Akash and PW-14 Neetu, being son and wife respectively of the deceased is cogent and reliable, the non-examination of other public witnesses from the place of occurrence or that other eye



witnesses PW-18 Bishambar and PW-22 Jasbir Singh were declared hostile and have not completely supported the case of the prosecution, will not adversely affect the prosecution case.

18. At this stage, it would be relevant to refer to statement of material prosecution witnesses, which will aid the court at arriving at a definite conclusion. PW-5, Akash Singh, the complainant is the eye-witness of the entire incident. In his testimony, he stated about the reason for the first scuffle between his father and the appellant, the cause leading to the second scuffle between the two and the actual incident of stabbing by the appellant with knife which resulted in fatal injuries caused to his deceased father. He deposed verbatim about the incident as stated by him to the police vide his statement Ex. PW3/A.

19. It also emerges from his testimony that at the time of the scuffle, for some time, PW-3 Raju Yadav was present at the spot who intervened in the fight but as the appellant and JCL 'B' did not listen to him so he left the spot. Further after father of PW-5 Akash was stabbed, he ran to the house of the PW-13, Darshan Singh where PW-3 Raju was also present, he told them regarding the assault and they accompanied him to the spot. PW-5 Akash Singh was cross examined by putting various suggestions to him, which he



denied and his testimony could not be demolished.

20. PW-3, Raju Yadav is a friend of deceased who deposed that on 28.11.2010, he was present in his house at about 4:45-5 pm, his friend Kadedin called him on his mobile number and asked him to come immediately near his house as Manish @ Ganja was quarrelling with him. He immediately rushed to gali no.30 where Kadedin used to reside and saw that Manish @ Ganja & his friend Biru Singh were beating Kadedin. He tried to intervene and save Kadedin and told both the assailants not to quarrel with Kadedin but they did not agree and continued beating Kadedin. In the meanwhile, Neetu, wife of the Kadedin and his son also reached to the spot. He left the spot and went to gali no.14 where Darshan Singh, common friend of PW-3 Raju Yadav and Kadedin used to reside. When he reached to the house of Darshan Singh, Akash came there running and informed him that “MERE PAPA KO MANISH @ GANJA AUR BIRU NE CHAKU MAAR DIYA”. Thereafter, he along with Darshan Singh and Akash rushed to the spot where lot of persons had gathered. He saw Kadedin lying on the road in an unconscious state and blood was oozing from his abdomen and his all clothes were smeared with blood. Akash called the police at 100 number and after sometime, police reached at the spot. He with the help of



Akash, Neetu and Darshan Singh shifted Kadedin to RML hospital along with two police officials. The witness also deposed that the IO had made inquiries from him and recorded statement of Akash which is Ex.PW2/A. Noticeably, the credibility of testimony of the witness could not be shaken during cross-examination conducted on behalf of the accused-appellant.

21. PW-13, Darshan Singh is also a friend of deceased Kadedin and resident of same locality i.e. Prem Nagar area. He testified that on 28.11.2010 at about 5 pm, he was present at Rama road when his friend Raju Yadav called on his mobile number and told him that accused Manish @ Ganja and JCL 'B' were beating Kadedin. He asked him to go to help Kadedin . In the meanwhile, Akash came there while weeping and told him that accused Manish @ Ganja and JCL 'B' had stabbed his father with a knife. He along with Akash came to gali no.14, Main Prem Nagar where a crowd had gathered and Kadedin was found in an unconscious situation. His wife Neetu was also present there and was weeping bitterly. Raju Yadav also arrived at the spot. He along with Akash, Neetu and Raju Yadav shifted the injured Kadedin to RML hospital where police also arrived. The doctors declared Kadedin as dead. He further deposed that police had recorded statement of Akash Ex.PW3/A which bears his signatures at Point C. The



testimony of the witness remained unshaken during cross-examination conducted on behalf of accused-appellant.

22. PW-14, Smt.Neetu is the wife of the deceased Kadedin who deposed that on 28.11.2010, in the evening hours, her husband left the house for plying his TSR. After sometime, Akash came weeping and told her that accused Manish @ Ganja and her husband, Kadedin, were quarrelling. PW-14 Neetu testified that thereafter she along with her son Aakash came down and saw accused Manish @ Ganja, Biru and her husband were present there. At that time, quarrel had subsided. Her husband made a call to the police while standing in gali no. 13 so that accused-appellant Manish @ Ganja should not quarrel with her children again. Accused Manish confronted her husband as to why he had made a call to the police and thereafter, started manhandling her husband. While quarreling, both of them came near her house. Accused / appellant Manish asked Biru to bring a knife, who came back with a knife and stabbed on the back of her husband. The witness further deposed that she became nervous and asked her son Akash to immediately call some friends of her husband from the nearby TSR stand. That she intervened in the fight and in the process, the knife fell down. Accused-appellant Manish picked up the knife and stabbed her husband



from front side two times on his chest and her husband fell down. Her son Akash came to the spot along with Darshan Singh and Raju Yadav. In the meanwhile, police officials also reached the spot and started inspecting the spot but she asked the police personnels to first save the life of her husband. She accompanied her husband with 2-3 persons of the locality to Dr. Ram Manohar Lohia Hospital where the Doctor had declared him dead.

The witness was cross-examined by learned APP as it was found that she was resiling from her earlier statement given to the police on some material aspects. In her cross-examination, she admitted that when her son Akash came to the house, he told her that accused Manish had given Akash a leg blow without any reason, for which a quarrel took place between her husband and Manish. She also admitted that while accused Manish was quarreling with her husband, Raju Yadav also came there of his own and tried to persuade accused Manish and when they did not listen, he went away. She also admitted that her son Akash was present at the spot when accused Manish stabbed her husband. She also admitted that after stabbing, accused Manish and Biru left the spot along with knife and her son Akash had gone to bring some persons from TCR stand and came back along with Darshan Singh and Raju Yadav. PW-14 Neetu was cross-examined at



length on behalf of accused-appellant but her testimony on material aspects could not be demolished and stood the test of cross-examination.

23. PW-22, Inspector Pawan Singh Rana, is the IO, who had deposed that on 28.11.2010, he was posted at police station Patel Nagar as SHO and SI Ganesh was on day emergency duty with Constable Dev Raj from 8:00 am to 8:00 pm, DD No.21-A, Ex.PW1/A was marked to PW-17/SI Ganesh Kumar. Accordingly, PW-17 along with PW-15/Constable Dev Raj and PW-21/Constable Homnidhi went to the place of occurrence and from the spot, SI Ganesh called him and informed that during quarrel, one person had been assaulted with a knife and injured had been taken to the RML hospital. Thereafter, he reached at the spot and it was revealed that Manish @ Ganja and JCL 'B' Singh had assaulted Kadedin Singh with knife. He also found that Kadedin Singh lying at the spot in unconscious state. SI Ganesh and Constable Homnidhi had accompanied injured to the RML hospital as per his instructions. From the hospital, SI Ganesh informed him that the concerned doctor, upon medical examination of the injured had declared him brought dead. In the hospital, SI Ganesh met Akash (PW-5) who stated himself to be the eye-witness of the incident. He further deposed that he recorded the statement of Akash at police station Patel Nagar which is



Ex.PW3/A and prepared rukka Ex.PW22/A and registered the FIR. Thereafter he prepared site plan Ex.PW22/B. Nothing material could be gathered through his cross-examination so as to shake his credibility and to benefit the defence of the appellant.

24. PW-2, Dr. Gaurav Aggarwal, Medical Officer, Dr. R.M.L. Hospital, New Delhi had prepared the MLC of the deceased after medical examining the deceased Kadedin. On examination, he found that patient was brought dead and found the following stab injuries on his person:

- i. *“One stab wound of size approximately 3 x 0.5 x 2 cm with bleeding present in epigastric area of abdomen communicating with abdominal cavity (right to midline);*
- ii. *Another stab wound of size approximately 3 cm x 0.5 cm just below the left nipple, which communicates with underlying ribs;*
- iii. *Another stab wound of size approx. 4 x 0.5 cm posterior to mid axillary line on the lower abdomen. That communicating with the underlying abdominal cavity.”*

He further deposed that he prepared the MLC Ex.PW2/A which bears his signatures at point A and his testimony remained unchallenged.

25. PW-11 Dr. B.N. Mishra is the Senior Medical Officer/Medico Legal Expert, DDU Hospital, Delhi and had conducted post-mortem upon the dead body of Kadedin and he had proved his report as Ex.PW11/A. He deposed



that he had found external and internal injuries on the person of the deceased which are as under:

EXTERNAL INJURIES:

- 1) *Abrasion of size 1.0cm x 1.2cm present on the left knee with reddish brown in colour.*
- 2) *An incised- stab wound of size 3.4cm x 1.2cm x deep to chest cavity present on the left side of chest which is appearing spindle shaped with regular margins and obliquely placement with dark reddish in colour. The wound located apart 3.5cm below from left nipple, 10cm lateral to mid sternal line and 27cm above from the umbilicus. On exploration of the penetrating injury traced out up to lower lobe of the left lung on anterior surface with making a tear of 2.5cm x 1.0cm x 2.0cm. The left pleural cavity filled by liquid and clotted blood of about 1000ml - 1200ml.*
- 3) *An incised- stab of size 3.5cm x 1.3cm x deep to abdominal cavity present on right hypochondrial region with sharp and regular margins with appearing spindle shaped and dark red in colour. On exploration of the injury it reached up to the anterior surface of right lobe of liver with making a tear of size 3.0cm x 1.0cm x 3.0cm. The peritoneal cavity filled by liquid and clotted blood of about 1200ml -1500 ml.*
- 4) *An incised- stab wound of size 3.5cm x 1.3cm x deep to abdominal cavity present on the right lumbar region of the abdomen with sharp and regular margins with appearing spindle shaped and dark red in colour. On exploration of the wound the peritoneum, mesentery, omentum and loops of small intestine found pierced of.*
- 5) *An incised - stab wound of size 3.5cm x 1.3cm x deep to abdominal cavity present on the mid left lateral*



lumber region of abdomen slightly directed forward and upward with sharp and regular margins with appearing spindle shaped and dark red in colour. On exploration the peritoneum and mesentery found torn of.

INTERNAL INJURIES

- *Ribs and Chest Wall: Chest wall at left side punctured by stab wound as mentioned in external injury no.2.*
- *Lungs: Both lungs pale. Penetrating injury present on the lower lobe of the left lung as mentioned in external injury no.2.*
- *Abdominal wall: Three penetrating injuries sustained on the abdominal wall as mentioned in detailed in external injury no.3, 4, 5.*
- *Live, gall bladder, biliary passages: Penetrating injury present in the liver as mentioned in external injury no.3.*

OPINION:

1. *TIME SINCE DEATH: Approx 3 days and 19-20 hours prior to post-mortem examination.*
2. *The cause of death is due to haemorrhagic shock caused by penetrating injuries to multiple vital organs (lung, liver, etc) by sharp edged and pointed weapon like knife etc.*
3. *All injuries are ante mortem in nature and same of duration. The external injury no 2, 3, 4 and 5 is sufficient to cause death in ordinary course of nature individually as well as in combination.*
4. *Manner of death is homicide.*
5. *Clothes, blood on gauge piece preserved sealed with seal of "DFMT, DDU HOSPITAL" and handed over to I.O.*
6. *TOTAL No. of Inquest papers: Fifteen (15) enclosed with signature."*



The testimony of PW-11 Dr. B. N. Mishra was not challenged by conducting his cross-examination.

26. Primarily, the learned counsel for the appellant has assailed the evidence of PW-5 Akash and PW-14 Neetu on the ground that it is not believable that they were the eye witnesses rather they were planted as eye witnesses of the crime by IO and being interested witnesses as PW-5 Akash Singh and PW-14 Neetu. It is submitted that the police case is that when PW-17 SI Ganesh along with PW-15 Constable Dev Raj reached at the spot, no eye-witness was found by them and police came to know in the hospital that PW-5 Akash was the eye-witness of the incident while he was present in the hospital, when PW-17 SI Ganesh had reached there. Therefore, in case PW-5 and PW-14 are the actual eye-witnesses, the same would have been in the knowledge of the police, when it had reached at the spot and PW-5 Akash and PW-14 Neetu were also there and had met with the police, which clearly indicates that they were subsequently introduced as eye witnesses by the police in order to falsely implicate the appellant.

27. Evidence of a witness is not to be disbelieved only because the witness is related to the deceased. It is to be confirmed whether the witness was present or not at the spot and whether is truthful or not, their evidence is



not free from doubt. At the outset, their presence at crime scene, when the actual incident has occurred is uncertain, therefore, their testimony is unreliable, which cannot be made basis for conviction of appellant. As per the prosecution case, after arriving at the spot on receiving DD entry, regarding quarrel, PW-17 SI Ganesh Kumar and PW-15 Constable Dev Raj came to know that a person namely Kadedin had been stabbed and was being taken to the hospital by the relatives in a private car. PW-17 informed PW-22, Inspector Pawan Singh Rana and he also reached at the spot and found that the injured was being taken by some persons to the hospital in a private car. He had instructed Constable Homenidhi to accompany the injured to the hospital and he himself started further investigation of the case. The police at that time had not find any eye witness at the spot. Thus, the prosecution version is not improbable or untrustworthy as when the Investigating Officer reached at the spot, the injured was being removed to the hospital and at that time, the Investigating Officer did not find any eye-witness from the public present at the spot. From the testimony of PW-22, it is clear that he had made inquiries from the public gathered at the spot but none stated to be an eye-witness of the occurrence at the spot. It further emerges from his testimony that wife of deceased PW-14 Neetu was



perturbed and was not even able to speak due to the death of her husband. It cannot be disputed that at that time, the primary concern of the family members would have been to take the injured who was stabbed and bleeding to the hospital for the treatment rather than narrating the sequence of the incident to the police. PW-14 Neetu had testified that she had requested the police personnels, who had begun the inspection of the spot to first save the life of her husband. Probably, at that time, PW-5 Akash and PW-14 Neetu were not in position to provide the details about the commission of offence to the police. More so, while the Investigating Officer was conducting the investigation at the spot, PW-17 SI Ganesh had informed him about the death of the injured from RML Hospital and also that eye-witness of the incident namely Akash (PW-5), son of the deceased was with him at the hospital and they were going to the police station.

28. Accordingly, the conduct of the family members of the deceased who had first preferred to shift the injured to the hospital from the spot for saving his life was natural and does not give rise to any suspicion. Therefore, the very fact that the eye-witnesses being the family members did not immediately inform the police officials when they arrived at the spot about the incident does not discredit their testimonies. Furthermore, the present



incident took place on 28.11.2020 at 5:00 pm. The MLC of the deceased Ex.PW2/A records that he was brought to RML hospital at about 6:25 pm where he was declared brought dead. The FIR of the case was registered on the statement of PW-5 Akash at 10:30 pm which names the appellant as the assailant along with JCL 'B' with detailed account of the incident and exact role played by them in commission of the offence. The entire sequence of the incidence does not generate any doubt that PW-5 had falsely named the appellant in his statement Ex.PW3/A as FIR was promptly lodged.

29. Another very important aspect is that no previous animosity between the deceased and their family members with the appellant has been brought on record. PW-22 Inspector Pawan Singh Rana has categorically testified that during investigation, it was revealed to him that there was no prior enmity between the appellant and family of the deceased. The appellant has stated in his statement under Section 313 Cr.P.C. that he did not know the deceased and his family members prior to the incident. Moreso, the presence of the PW-5 Akash Singh and PW-14 Neetu at the place of occurrence during incidence could not be refuted on behalf of the appellant. So much so, the presence of the appellant during the incident at the spot stands admitted on the basis of cross-examination of PW-5 conducted on his behalf



wherein PW-5 was suggested that accused – appellant Manish had intervened to save his father and JCL ‘B’ had caused the injuries to his father. This clearly shows that both PW-5 Akash and accused-appellant were present at the spot during the incident.

30. The appellant has also pointed out certain contradictions and improvements in the testimony of the prosecution witnesses to establish that the said witnesses were not present at the place of crime at the time of incident and they are not truthful witnesses. These contradictions have also been noted by the learned ASJ are as under:

- a) *“PW5 has not mentioned about the presence of PW14 at the time of the incident of stabbing whereas PW14 has claimed to have witnessed the said incident;*
- b) *PW5. has deposed that he intervened when JCL 'B' stabbed the deceased with knife from behind whereas PW14 has testified that she intervened in the said moment;*
- c) *PW14 has testified that the incident took place in presence of PW3 Raju Yadav whereas the said version is in contradiction of the story of the prosecution and testimony of PW3;and*
- d) *PW3 and PW5 have deposed that after the accused stabbed the deceased, PW5 rushed to the place of PW13 and from there PW3 and PW13 reached the spot along with PW5. However, PW13 has deposed that only he came to the spot with PW5 whereas PW3 independently reached the spot.”*

31. Learned Trial Court has correctly on appraisal of the testimony of the



aforesaid witnesses come to the conclusion that the contradictions as pointed out by the defence are not material enough to discard their testimonies and inferred that the witnesses were present at the scene of occurrence and their testimonies were reliable.

32. It is to be noted that testimony of PW-5 Akash Singh about his being present during the entire incident i.e. when the scuffle occurred between deceased and the appellant as well as the entire stabbing scene wherein the appellant had vigorously participated in causing the fatal injuries on the person of the deceased cannot be disputed. It is also proved that initial scuffle between the deceased and appellant was triggered on a trivial issue, which PW-5 Akash had informed to PW-14 Neetu while she was in the house. He also admitted the presence of PW-14 Neetu at the spot. PW-14 Neetu has corroborated his testimony on the material aspects and she had admitted the presence of PW-5 Akash at the spot when appellant had stabbed her husband.

33. The presence of PW-3 Raju and PW-13 Darshan Singh at the place of occurrence can also be not disputed, however, the stabling incident did not take place in their presence. Although, PW-3, Raju Yadav had also witnessed some part of the scuffle between the deceased and the appellant



and he tried to intervene but as he could not succeed so he had left the spot. PW-3 Raju and PW-13 Darshan Singh came back to place of the incident as PW-5 Akash informed them that his father was stabbed. On reaching the spot, they had found the father of PW-5 lying unconscious on the road and bleeding. It is further proved that PW-5 Akash, PW-14 Neetu and PW-13 Darshan Singh had shifted the injured to the RML Hospital. Furthermore, from MLC of the injured / deceased, Ex. PW-2/A, it is clear that PW-14 had brought the deceased to the RML Hospital on 28.11.2010 at 06:25 PM and she had told the alleged history of assault by knife to the Doctor.

34. Learned counsel for the appellant has not been able to satisfy us that the evidence of the eye witnesses, PW-5 Akash and PW-14 Neetu and the other prosecution witnesses is unreliable or that the assessment made by the learned Sessions Judge about their being creditworthy was incorrect. Their presence during the commission of the offence has been proved. The contradictions pointed out by the learned counsel are immaterial and inconsequential, which do not disturb the basic skeleton of prosecution case. The appellant has failed to point out any phenomenal contradictions according to the actuality raising serious doubts on the credibility of the prosecution witnesses, which is further supported with Ex. PW-11/A, the



post-mortem report of the deceased.

35. The appellant also calls in question the legality of the judgment rendered by the learned Sessions Judge by submitting that the applicability of Section 302 IPC, by any parameter, was not covered in the facts and circumstances of the present case. The occurrence took place as the appellant was deprived of the power of self control by grave and sudden provocation caused to him by the deceased and the case falls under Exception I Section 300 IPC as the deceased had instigated the appellant to indulge in fight with him and then had called the police also. Therefore, the conviction of the appellant under Section 302 IPC is bad in law.

36. The only issue requiring consideration that remains is whether the acts of the appellant constitute the offence of murder or the offence of culpable homicide, not amounting to murder.

37. So far as the question regarding bringing in operation of Exception I to Section 300 IPC, we are not in complete agreement with the said argument raised on behalf of the appellant. The doctrine relating to provocation depends upon the fact that it causes a sudden and temporary loss of self control and such provocation must be both grave and sudden, so as to earn the benefit of the provision of Exception I of Section 300 IPC. On



scrutiny of the entire evidences, it is nowhere established that the deceased in any manner i.e. by way of gestures, words or creating certain situation that had caused sudden and grave provocation to the appellant so as to bring his action under this Exception. The said exception deals with cases, where there is total deprivation of self control.

38. On the other hand, the evidence reveals that a dispute between the appellant and the deceased arose with a specific reference to that appellant had kicked on the back of PW-5 Akash without any reason. The said act had scared PW-5 and he immediately left the spot and informed his father about it. Accordingly, deceased being the parent, confronted the appellant for his such an act and on such insignificant issue, they grappled with each other. The occurrence of stabbing the deceased with knife by appellant took place in the course of sudden quarrel, which was in no manner pre-mediated. There was as such no intention on part of the appellant to kill, the intention probably was to cause bodily injury in the abdomen and one in the chest. However, he had the knowledge that three stab injuries being caused by him with knife in the abdomen could result in the death of the deceased. In the absence of any previous animosity between the appellant or deceased & family members as the injuries were inflicted in a sudden fight in the heat of



passion, thereby, brings the case within the scope of Exception 4 to Section 300 IPC.

39. In the case of *Sridhar Bhuyan vs. State of Orissa: (2004) 11 SCC 395*, the Hon'ble Apex Court has held as under:

“The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual



provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

The above case is quite close on the facts to the case in hand except to the extent that in the above case, during quarrel, the appellant himself went inside his house and came out with a knife and dealt blows with it on the back of the deceased. In the present case, the appellant asked the JCL 'B' to bring the knife and when the knife fell on the ground from the hands of JCL



‘B’, he picked it up and inflicted three stab injuries on the abdomen of the deceased.

40. Upon analysing the testimony of witnesses and having regard to the facts and circumstances of the case and in view of the above discussion, we partially accept this appeal and conviction is altered from Section 302 IPC to Section 304 Part (I) IPC. We award a sentence of ten years of rigorous imprisonment and a fine of Rs. 10,000/- and in default, to undergo simple imprisonment for one month. The judgment under appeal is modified in above terms. The appeal is disposed of accordingly.

(SHALINDER KAUR)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 22, 2023
SS